

LAW OFFICES

SPECTOR, ROSEMAN & KODROFF

EUGENE A. SPECTOR
ROBERT M. ROSEMAN**
JEFFREY L. KODROFF
JAMES A. CAPUTO*
JEFFREY J. CORRIGAN**
THEODORE M. LIEVERMAN*
JOHN A. MACORETTA*
WILLIAM G. CALDES*
DAVID J. COHEN*
MICHAEL R. VACHON*
ANDREW D. ABRAMOWITZ***
DAVID FELDERMAN*
SIMON BAHNE PARIS***
JENNIFER DANIEL-DUCKERING*
MELISSA H. HOLZMAN*

A PROFESSIONAL CORPORATION
1818 MARKET STREET, SUITE 2500
PHILADELPHIA, PA 19103
(215) 496-0300
FAX (215) 496-6611
E-MAIL: CLASSACTION@SRK-LAW.COM

JAY S. COHEN
OF COUNSEL

401 B STREET
SUITE 1600
SAN DIEGO, CALIFORNIA 92101-4297
(619) 338-4514
FAX (619) 239-0547

* MEMBER OF PA & NJ BAR
** MEMBER OF PA & NY BAR
*** MEMBER OF MD BAR
* MEMBER OF CA BAR
** MEMBER OF NY & NJ BAR
*** MEMBER OF NJ & FL BAR

October 28, 2003

VIA HAND DELIVERY

Robert J. Haurin, Esquire
Saul H. Krenzel & Associates
42 South 15th Street, Suite 800
Philadelphia, PA 19102

Re: *El v. SEPTA*, Civil Action No. 02-CV- 3591
Continuing Discovery Issues.

Dear Mr. Haurin:

Thank you for taking the time to talk with me yesterday about the status of SEPTA's responses to Plaintiff's document requests. As we discussed, I have compared Plaintiff's requests with SEPTA's production to date. While SEPTA has produced documents in response to some of these requests, it has not produced documents (or made only a cursory production) in response to others. You have agreed to approach SEPTA with to secure supplemental documents based on the information provided in this letter and get back to me as soon as possible about the availability of additional materials. To simplify this task, I have set out below the wording of several document requests, a description of the materials produced to date (if any) and some comments to guide your inquiries.

SEPTA DOCUMENT REQUESTS

1. A copy of each form of contract used by SEPTA related to the provision of paratransit services.
 - SEPTA has produced agreements with Atlantic (1), Edens (2); King Paratransit (1), Krapfs (2) and Triage(2).
 - SEPTA has offered to produce agreements with Community, King Limousine (if available) and Anderson.
 - SEPTA has not offered to produce agreements with Allstate, Metro Care, VPSI, Liberty or Service Plus.

Robert J. Haurin, Esquire
October 28, 2003
Page 2

2. All documents related to any SEPTA policy concerning the application, hiring or termination of employees with past criminal convictions.
 - SEPTA has produced eight agreements (see no. 1, supra) that include general minimums for paratransit employees;
 - SEPTA has produced pages 3038-3191 (6 copies of guideline to screen for criminal offenses; 5 copies of letters raising problems with required criminal record checks; letter requiring paratransit providers to give SEPTA criminal background reports for all individuals under consideration for employment in SEPTA-related service; letter, re: Triage's use of ADP criminal record check service; and letter, re: official notice to remove one driver from service for criminal history).
 - SEPTA has not produced its driver files for any paratransit employees.
 - SEPTA has not produced any criminal record files for paratransit employees.
 - SEPTA has not produced any official notices to remove any paratransit employees for criminal record problems.
 - SEPTA has not produced any documents related to the 128 drivers known to have been removed from service for criminal record problems.
 - SEPTA has not produced any documents, re: El's termination.
3. All documents related to the creation, approval, publication, revision or modification of any SEPTA policy concerning the application, hiring or termination of employees with past criminal convictions.
 - SEPTA has produced pages 3789-4222 (third draft of a Request for Proposal for Paratransit Services for the City of Philadelphia)
 - SEPTA has not produced other drafts of the Request for Proposal, or the final version of the Request for Proposal.
 - SEPTA has not produced any documents having to do with the creation, approval, publication, revision or modification to its policy concerning the application, hiring or termination of employees with past criminal convictions for paratransit providers ("general minimums").
6. All documents related to the failure of any person named in response to Interrogatory 2 to follow any policy concerning the application, hiring or termination of employees with past criminal convictions.
 - SEPTA has produced pages 3038-3191 (multiple criminal record checks returned for insufficient information).
 - SEPTA has not produced any documents related to the 128 drivers removed from service.
 - SEPTA has not produced official notices concerning the removal of any paratransit employees from service due to criminal record issues.

Robert J. Haurin, Esquire
October 28, 2003
Page 3

7. All documents related to the number and identity of people with past criminal convictions who were hired, refused employment or terminated by any of the people named in response to Interrogatory 2.
 - SEPTA has produced pages 3032-37 (Report listing 128 drivers removed from Anderson, Atlantic, Edens, King, Liberty and Triage).
 - SEPTA has not produced any documents related to drivers removed from service by Allstate, Community, Krapfs, King Limousine, King Paratransit, Metro Care, Service Plus or VPSI.
 - SEPTA has not produced any documents related to the 128 drivers removed from service.
9. All EEO-1 forms filed by SEPTA or any of the people named in response to Interrogatory 2.
 - SEPTA has not produced any responsive materials.
 - SEPTA is permitted to include information about other entities with which it is affiliated or does business on its EEO-1 Form. If its EEO-1 Forms include information about any of the paratransit providers, we should be entitled to see them.
10. Any documents sent to or from any state or federal agency (including, but not limited to, the Equal Employment Opportunity Commission and the Pennsylvania Human Relations Commission) by SEPTA or any of the people named in response to Interrogatory 2 related to the application, hiring or termination of employees with a past criminal conviction.
 - Plaintiff has 11/30/00 PA HRC Complaint, the EEOC's 9/14/01 Determination and the 3/6/02 "Right-to-sue" letter concerning his claims.
 - SEPTA produced pages 3192-3776 (6/18/2001 3-page response to Plaintiff's PA HRC Complaint; 5-page motion to dismiss; and 576 pages of exhibits – mainly contracts with providers listed in no. 1, above)
 - SEPTA has offered to produce all other HRC and EEOC documents related to Plaintiff.

BRANDIS DOCUMENT REQUESTS

1. All documents in Frank Brandis' possession or control that relate to SEPTA's paratransit providers.
 - SEPTA has produced pages 3789-4222 (third draft of a Request for Proposal for Paratransit Services for the City of Philadelphia)
 - SEPTA has offered to produce additional documents when identified.
 - SEPTA has not produced any of the paratransit driver records identified during Mr. Brandis' deposition questioning. See Brandis Dep. Tr. 61-63.
 - SEPTA has not produced any of the paratransit company files identified during Mr. Brandis' deposition questioning. See Brandis Dep. Tr. 74-75.
 - See also SEPTA Document Requests 2-3 and 10, supra.

Robert J. Haurin, Esquire
October 28, 2003
Page 4

3. All documents in Frank Brandis' possession or control that relate to the creation, revision or enforcement of SEPTA's "general minimums."
 - SEPTA has produced pages 3777-88 (8/25/94 memo, re: request for paratransit criminal record check; 10/13/94 memo, re: cost analysis, including criminal record check; 10/13/94 report of complaints and commendations by carrier; two newspaper articles; a chart of projections for riders and costs; and a chart showing responsibilities for contract provisions.
 - SEPTA has produced pages 3789-4222 (third draft of a Request for Proposal for Paratransit Services for the City of Philadelphia)
 - SEPTA has offered to produce additional documents when identified.
 - See also SEPTA Document Requests 2 and 3, supra.
5. All documents in SEPTA's possession or control that relate to the creation, revision or enforcement of its "general minimums."
 - SEPTA has produced pages 3789-4222 (third draft of a Request for Proposal for Paratransit Services for the City of Philadelphia)
 - See SEPTA Document Requests 2-3, supra.
 - Also, SEPTA claims to have produced all non-privileged documents but has not produced a privilege log identifying the documents withheld from production in such a way that would enable Plaintiff to determine whether the assertion of privilege is proper.
6. All documents in Frank Brandis' possession or control that relate either to violations of SEPTA's "general minimums," or to the enforcement of those "general minimums" with respect to any paratransit provider.
 - SEPTA has not produced any responsive materials.
 - See SEPTA Document Request 6, supra.
 - See Brandis Document Requests 1 and 3, supra.
 - SEPTA has objected to this request because responsive documents would be privileged, but has not produced a privilege log identifying the documents withheld from production in such a way that would enable Plaintiff to determine whether the assertion of privilege is proper.
8. All documents in SEPTA's possession or control that relate either to violations of its "general minimums," or to the enforcement of those "general minimums" with respect to any paratransit provider.
 - SEPTA has not produced any responsive materials.
 - See SEPTA Document Request 6, supra.
 - See Brandis Document Requests 1 and 3, supra.
 - SEPTA has objected to this request because responsive documents would be privileged, but has not produced a privilege log identifying the documents withheld from production in such a way that would enable Plaintiff to determine whether the assertion of privilege is proper.

Robert J. Haurin, Esquire
October 28, 2003
Page 5

9. All documents relating to criminal record checks performed by SEPTA for all applicants to, or employees of, SEPTA's paratransit providers.
 - SEPTA has offered to produce additional documents when identified.
 - See Brandis Document Request 1, supra.
10. All documents relating to criminal record checks performed by any paratransit provider for any applicant or employee.
 - SEPTA has offered to produce additional documents when identified.
 - See Brandis Document Request 1, supra.

Finally, I am aware that you have opposed Plaintiff's request for an extension of the discovery and briefing schedule in this case. As you know, Judge Joyner has asked me to file a formal motion on this issue in the absence of an agreement between the parties. I have asked you to reconsider SEPTA's position given: (1) that all of the Third-Party Defendants have now either written to J. Joyner in support of Plaintiff's request or agreed not to oppose it; (2) that I have been actively negotiating to secure documents from the Third-Party Defendants and the vast majority of their productions are still ongoing; (3) that SEPTA's production of documents is still ongoing; and (4) that an extension would alleviate the burden on you of filing a premature summary judgment motion. Please advise me of your decision on this point as soon as possible so that I can present the issue to the Court.

Please contact me immediately with any questions about this letter.

Very truly yours,



David J. Cohen

cc: Wayne Ely, Esquire